

**DISTRICT OF COLUMBIA**  
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DISTRICT OF COLUMBIA  
DEPARTMENT OF CONSUMER AND  
REGULATORY AFFAIRS  
BUSINESS AND PROFESSIONAL  
LICENSING ADMINISTRATION

Petitioner,

v.

MARY HALEY  
Respondent

Case No.: CR-B-06-800038

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**FINAL ORDER**

**I. Introduction**

On or about December 7, 2005, the Board of Real Estate Appraisers (the “Board”) issued a Notice of Intent to Take Disciplinary Action (the “Notice”) against Respondent, Mary Haley, a licensed real estate appraiser. The Notice indicated that the Board intended to suspend or revoke Ms. Haley’s license or impose a civil fine pursuant to D.C. Official Code § 47-2853.17(c) and Title 17 of the District of Columbia Municipal Regulations (the “DCMR”). The Notice also informed Ms. Haley that she had the right to challenge the Board’s proposed action, by filing an appeal with the Board within 20 days.

On December 22, 2005, Respondent filed an appeal request with the Board. On March 24, 2006, the Government filed the request with this administrative court along with a memorandum from Cheryl Randall Thomas, Branch Chief for the Occupational and Professional

Licensing Division of the Department of Consumer and Regulatory Affairs, requesting this court to conduct formal proceedings on Ms. Haley's appeal. I interpreted this request as a delegation of the Board's authority to hold a hearing and issue a decision in this matter pursuant to D.C. Official Code § 2-1831.03(i) and 17 DCMR 2300.9. *See In re: Karen E. Fryer, L.S.W.A.*, OAH No. DH-B-04-80200 (Final Order, July 27, 2005).<sup>1</sup>

The Notice alleged grounds for disciplinary action against Ms. Haley under §47-2853.17(a)(9) and (19).<sup>2</sup> It alleged that she willfully made or caused to be made a false and misleading appraisal report and that she committed a substantial error or omission that significantly affected an appraisal report in violation of the Appraisal Standards Board, Uniform Standards of Professional Appraisal Practice ("USPAP") 2002 ed. The Notice further indicated that each charge was based upon Ms. Haley's appraisal of a single-family residence at 1924 15<sup>th</sup> Street, Southeast (the "Property").

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<sup>1</sup> This case is being transmitted to LEXIS ([www.lexis.com](http://www.lexis.com)) for publication in the District of Columbia Office of Administrative Hearings database.

<sup>2</sup> D.C. Official Code § 47-2853.17(a) provides in part:

(a) Each board, subject to the right of a hearing as provided by this subchapter, on an affirmative vote of a majority of its members present and voting may take 1 or more of the disciplinary actions provided in subsection (c) of this section against any applicant or person permitted by this subchapter to practice an occupation or profession regulated by the board who: \*\*\*

(4) Is disciplined by a licensing or disciplinary authority in another jurisdiction, or is convicted or disciplined by a court of any jurisdiction, for conduct that would be grounds for disciplinary action under this section; \*\*\*

(9) Willfully makes or files a false report or record in the practice of his or her occupation or profession, willfully fails to file or record any report required by law, impedes or obstructs the filing or recording of the report, or induces another to fail to file or record the report; \*\*\*

(19) Violates any District or federal law, regulation, or rule related to the practice of the occupation or profession; \*\*\*

I scheduled an evidentiary hearing for September 6, 2006. Prior to the hearing, the Government filed a Motion to Amend the Notice and an Amended Notice which included a new charge against Ms. Haley (the “Additional Charge”). The Additional Charge asserted that two other jurisdictions, Maryland and Virginia, had imposed sanctions against Ms. Haley. The Government contended that disciplinary action was therefore also authorized under § 47-2853.17(a)(4).

At the September 6<sup>th</sup> hearing, Joel D. Armstrong, Esq., appeared on behalf of the Petitioner and Ms. Haley appeared *pro se* by telephone. The Government presented Kevin Kielsgard, a certified USPAP instructor, as an expert witness in the real estate appraisal field. Mr. Kielsgard testified regarding an independent appraisal he had prepared on the Property, as well as an USPAP compliance review he conducted of Ms. Haley’s appraisal. Ms. Haley also testified in her own behalf and contended that any errors on her part were unintentional.

After the conclusion of testimony on the two charges set forth in the original Notice, I continued the hearing to afford Ms. Haley an opportunity to respond to the Government’s motion to amend the Notice. I also indicated that if I granted the Government’s motion, the parties would have the opportunity at the continued hearing to present evidence on the Additional Charge.

At the continued hearing on March 28, 2007, E. Louise R. Phillips, Esq., appeared on behalf of the Government by telephone, as did Ms. Haley. At the commencement of the hearing, I granted the Government’s motion to amend the Notice over Ms. Haley’s objection. The Government then called Ms. Haley as an adverse witness regarding disciplinary actions taken against her appraisal license in Maryland and Virginia. Ms. Haley also testified in her own

behalf and asserted that the disciplinary decisions in Maryland and Virginia were without merit.

The Government also offered Petitioner's Exhibits ("PX") 100 through 134, 138 through 152, and 170 through 193, which I admitted without objection.

On September 14, 2007, the Government filed its Proposed Findings of Fact and Conclusions of Law. Ms. Haley did not submit proposed findings and conclusions despite the opportunity to do so.

## **II. Findings of Fact**

### **A. Analysis of Credibility And Expert Testimony**

The pivotal facts in this case are not contested. Ms. Haley concedes that she made mistakes in preparing the Appraisal. Additionally, because she was unable to recall specific details about the Property, she offered little to rebut the Government's evidence. Ms. Haley also acknowledged that her appraisal license had been "revoked" in Maryland and Virginia after administrative hearings in each jurisdiction, although she asserted that both decisions were incorrect.

Ms. Haley did challenge the opinions of Kevin Kielsgard, the Government's expert witness, concerning the fair market value of the Property, the validity of using certain comparable sales in determining that value, and whether the Property should have been deemed in "average" condition as the Appraisal indicated, or in "fair" condition as Mr. Kielsgard opined.

Since specialized training, experience or knowledge is required to appraise real estate, only an expert can validly testify on proper appraisal methods and analysis. *District of Columbia v.*

*Arnold & Porter*, 756 A.2d 427, 433 (D.C. 2000) (quoting *Messina v. District of Columbia*, 663 A.2d 535, 538 (D.C. 1995) (expert testimony is necessary “if the subject in question is so distinctly related to some science, profession or occupation as to be beyond the ken of the average layperson.”) See Federal Rule of Evidence 701<sup>3</sup> (witness may not offer testimony that is based on scientific, technical, or other specialized knowledge unless qualified as an expert) and 702.<sup>4</sup> Mr. Kielsgard testified regarding his general background as an appraiser, having received his appraiser’s license in 1991. He has been a real estate appraisal instructor in Virginia since 1995 and is a certified USPAP Instructor. In addition to this experience, Mr. Kielsgard belongs to several professional organizations, including the National Association of Realtors, the National Association of Realtors Appraiser Section, the Virginia Association of Realtors, the Virginia Association of Realtors Appraiser Section, and the Northern Virginia Association of Realtors and its Appraiser Section. Mr. Kielsgard is also an affiliate member of the Greater

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<sup>3</sup> The Federal Rules of Evidence are not binding, but may be deemed persuasive authority in proceedings before this administrative court. OAH Rule 2820.2; 1 DCMR 2820.1. Federal Rule of Evidence 701 states:

If the witness is not testifying as a expert, the witness’ testimony in the form of opinions or inferences is limited to those opinions or inferences which are (a) rationally based on the perception of the witness, (b) helpful to a clear understanding of the witness’ testimony or the determination of a fact in issue, and (c) not based on scientific, technical, or other specialized knowledge within the scope of Rule 702.

<sup>4</sup> Federal Rule of Evidence 702 states:

If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise, if (1) the testimony is based upon sufficient facts or data, (2) the testimony is the product of reliable principles and methods, and (3) the witness has applied the principles and methods reliably to the facts of the case.

Capital Area Association of Realtors in the District of Columbia and Montgomery County. Based upon these credentials, and there being no objection, I accepted Mr. Kielsgard as an expert in the real estate appraisal field.

Ms. Haley did not present evidence to qualify herself as an expert nor did she call an expert witness to rebut Mr. Kielsgard's testimony. I therefore find Mr. Kielsgard's expert opinion testimony to be more persuasive on the issue of whether Ms. Haley erred in valuing and describing the Property in the Appraisal.

Mr. Kielsgard also testified on the issue of whether Ms. Haley violated USPAP standards and opined that Ms. Haley had committed four specific USPAP violations. Other than stating that any errors in the Appraisal were unintentional and offering testimony to support her valuation, Ms. Haley did not challenge this testimony.

Ms. Haley did contest one Government contention – that the Appraisal misstated the number of bedrooms on the Property. Although the Government asserted that the Property contained two bedrooms, Ms. Haley testified that her Appraisal correctly stated that there were three. I find Ms. Haley's testimony to be credible on this relatively minor point.

## **B. Findings**

Based upon this analysis of the witnesses' credibility and the testimony of the Government's expert, I make the following findings:

1. In January 2002 the owner of the Property listed it for sale with a Multi-Listing Service at an original price of \$49,900.00. PX 101, 125, and 127. The owner subsequently reduced the price to \$44,900 and on May 18, 2002, entered into a contract to sell the Property to Theophilus K. Ojo for \$40,000. *Id.*
2. On or about June 4, 2002, a company providing financing to Michele Hyatt, who subsequently purchased the Property from Mr. Ojo, engaged Ms. Haley to prepare an appraisal on the Property. PX 109. In the Appraisal, Ms. Haley valued the Property at \$135,000. PX 110.
3. On July 10, 2002, Mr. Ojo purchased the Property for \$40,000. PX 128. Less than two months later, on August 1, 2002, he sold the property to Ms. Hyatt, for \$135,000. *Id.*
4. Based upon an appraisal prepared by Kevin Kielsgard, a certified USPAP instructor and an expert in real estate appraisals, the fair market value of the Property at the date of the Appraisal was \$54,000. PX 104.
5. The Appraisal identified Theophilus K. Ojo as the owner of the Property; however, at the time of the Appraisal he was merely a potential purchaser under a contract for sale and not the titleholder. PX 101, 111 and 128.
6. The Appraisal failed to indicate that the Property had been listed for sale and was then the subject of a contract of sale. Moreover, next to the section labeled "analysis

of any current agreement, option, or listing of the subject property” the Appraisal noted “NA”. PX 113.

7. USPAP standards require that real estate appraisals analyze any current agreements and listings relating to the subject property.
8. Three of the four comparable sales designated as a basis for the Appraisal’s evaluation occurred more than six months prior to the date of the Appraisal and should not have been used without a detailed explanation. The fourth comparable sale, though occurring within the appropriate six-month time period, involved a home in considerably better condition than the Property.
9. The Appraisal contained the following additional errors and omissions: (i) a picture included in the Appraisal purported to be of the Property but was in fact a picture of a different home; (ii) the address of the Property reflected a location in the Northeast rather than the Southeast quadrant of the District; (iii) the Appraisal inaccurately depicted the flood map designation for the Property; (iv) the condition of the Property should have been stated as fair rather than average; and (v) the heat source for the Property was described incorrectly. *Compare* PX 101 through 108 to PX 109 through 116 and PX 118 to PX 125.
10. On January 11, 2005, Ms. Haley and her counsel attended an Informal Fact Finding (“IFF”) Conference of the Commonwealth of Virginia Real Estate Appraisal Board (the “Virginia Board”). The purpose of the IFF Conference was to consider a Report of Findings dated September 20, 2004, and revised November 12, 2004, (the



“Report”) prepared by the Virginia Department of Professional and Occupational Regulation. PX 173 through 175.

11. The Report concerned an appraisal prepared by Ms. Haley on residential property located in Virginia. At the IFF Conference, the Virginia Board recommended revocation of Ms. Haley’s license to perform appraisals in Virginia. *Id.*
12. At its meeting on February 22, 2005, the Virginia Board adopted and incorporated in its Final Opinion and Order, the Report and a Summary of the IFF Conference dated February 1, 2005. *Re: Mary Walsh Haley*, File Number 2003-00295. In so doing, it found that Ms. Haley had violated three USPAP standards which also constituted violations of the Virginia Board’s Regulations. As a result, the Virginia Board revoked Ms. Haley’s license. PX 170 through 172.
13. Ms. Haley did not attend the Virginia Board meeting; however, she was notified of the meeting and requested a continuance, which the Board denied. *Id.*
14. On June 2, 2005, Ms. Haley and her counsel appeared at a hearing before the Maryland Commission of Real Estate Appraisers and Home Inspectors (the “Commission”). The hearing concerned proposed disciplinary action relating to Ms. Haley’s appraisal of residential property located in Maryland. PX 180 through 193.
15. On June 14, 2005, the Commission issued its Final Decision and Order Finding that Ms. Haley had violated USPAP standards and the Maryland Code. As a result, it suspended her license for one year and imposed a \$2,500 fine.<sup>5</sup> *Id.*

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<sup>5</sup> Ms. Haley testified that her license was revoked in Maryland; however, the Commission’s Final Decision clearly states that her license was suspended for one year.

16. Ms. Haley appealed the Virginia Board's Opinion and the Maryland Commission's Final Decision but was unsuccessful in both appeals.

### **III. Conclusions of Law**

#### **A. Did Respondent Willfully Make Or File A False Report?**

The Government contends that disciplinary action is authorized against Respondent under D.C. Official Code § 47-2853.17(a)(9) due to Respondent willfully making or filing a false report in the practice of her profession. [Government's Proposed Findings of Fact and Conclusions of Law ("GPF") p. 24].

Willful conduct is intentional or deliberate rather than inadvertent or accidental. *Hager v. D.C. Dep't of Consumer and Regulatory Affairs*, 475 A.2d 367, 368 (D.C. 1984). Willfulness means "something worse than good intentions coupled with bad judgment." *Sherman v. Comm'n on Licensure to Practice the Healing Art*, 407 A.2d 595, 599 (D.C. 1979) (quoting *Mullen v. United States*, 263 F.2d 275, 276 (1958)). In *M.B.E Inc. v. Minority Bus. Opportunity Comm'n of D.C.*, 485 A.2d 152, 158 (D.C. 1984), the court held that in finding willfulness the focus "is on the intentional performance of a prohibited act." The term, "willful" is more restrictive than "knowingly" in that it requires proof of a culpable mental state, *i.e.*, an intent to violate the law. *Parreco v. D. C. Rental Hous. Comm'n*, 885 A.2d 327, 337 n.15 (D.C. 2005).

Here the Government suggests that "'willfulness' does not necessarily require intent to do harm; but does require a conscious indifference to consequences under circumstances likely to cause harm." *See Sherman*, 407 A.2d at 600. The Government also contends that "a willful

violation occurs if a person 1) intentionally does an act that is prohibited without regard to motive or reliance on erroneous advice or 2) acts with careless disregard of statutory requirements.” *M.B.E. Incorporated*, 485 A.2d at 159 [GPF p. 23]. Both *Sherman* and *MBE* concern the question of whether a careless statutory violation might be deemed “willful” without evidence of intent. They do not address whether one could *willfully* file a false report without knowledge that the report was false.

*Gearhart & Otis, Inc. v. SEC*, 348 F.2d 798 (D.C. Ct. App., 1965) *cited with approval in Hager*, 475 A.2d 367, is more analogous to this case and concerns using a false offering circular to sell stock. The Court found that “willfully” in this context means intentionally committing the act constituting the violation. Thus, the proof necessary to establish a violation of Section 15(b) is that a person sold common stock *knowingly* using a false offering circular.

*Gearhart’s* rationale is applicable in this case. Willfulness is not established by merely filing a report that contains errors, even if the errors are careless and render the report false. Absent evidence that the person knew the report was false, it can not be found that he or she willfully filed a false report and thus violated § 47-2853.17(a)(9).

According to the Government’s expert, the Appraisal was flawed in two fundamental respects. First, it failed to analyze the sales listing or purchase contract under which Mr. Ojo acquired the Property for \$40,000. This contract was entered into approximately two months before the Appraisal and its disclosure would have glaringly contradicted Ms. Haley’s valuation. Yet, Ms. Haley testified that at the time of her appraisal she was not aware of any contract other than the agreement between Mr. Ojo and Ms. Hyatt, who ultimately purchased the property for

\$135,000. The Government did not present any evidence to rebut this assertion and did not establish that Ms. Haley had access to either the listing or Mr. Ojo's purchase agreement.

The second significant flaw in the Appraisal was Ms. Haley's use of inappropriate comparable sales in valuing the Property. Mr. Kielsgard's expert testimony established that home sales closer in time to the Appraisal's preparation were more indicative of the Property's value and therefore should have been used as comparables. In response, Ms. Haley offered testimony to support her choice of the home sales she considered in the Appraisal. Although Mr. Kielsgard's testimony is more persuasive on this issue, it can not be held on this record that Ms. Haley intentionally relied upon inappropriate comparable sales and thus knowingly made a false appraisal report.

The Government's only evidence that Ms. Haley *knew* that the appraisal was not complete was her failure to include an analysis of the contract between Mr. Ojo and Ms. Hyatt. Ms. Haley admitted that she knew that under USPAP standards an analysis of this contract was required; however in response to a question on the appraisal form regarding the contract Ms. Haley indicated "N/A". The Government did not establish the terms of this contract but, since Ms. Hyatt purchased the Property for \$135,000, it may be inferred that this was the contract purchase price. Thus, inclusion of the contract would have supported Ms. Haley's valuation of the Property. Conversely, Ms. Haley's failure to include a contract analysis with a purchase price identical to the valuation in the Appraisal did not cause a false report.

Nothing in the Government's evidence showed the culpable state of mind necessary to establish that Ms. Haley acted willfully. The Government did not allege, much less prove, that she benefited from the erroneous appraisal. Nor did the Government present any other evidence

that would provide a motive to support a claim that Ms. Haley's conduct was willful. Most significantly, the Government did not present any evidence tending to demonstrate that Ms. Haley knew the Appraisal was inaccurate or that her omission of the sales contract analysis resulted in a false appraisal. Accordingly, disciplinary action is not authorized under D.C. Official Code § 47-2853.17(a)(9).

**B. Did Respondent Violate Any District Regulation Related To The Practice Of Her Occupation?**

The Government also alleges that Ms. Haley's failure to conform with USPAP standards warrants discipline under D.C. Official Code § 47-2853.17(a)(9). This provision permits Board action against a licensee who violates any District law or regulation. To this end, the Government cites 17 DCMR 2316.1 and 2316.4. [GPF p.20].

Section 2316.1 provides:

A licensee shall conduct all appraisals in conformity with the current edition of the Uniform Standards of Professional Appraisal Practice as promulgated by the Appraisal Standards Board of the Appraisal Foundation, including Preamble, Ethics Provision, Competency Provision, Departure Provision, Jurisdictional Exception, Supplemental Standards, Definitions and Standards 1, 2, and 3 with all related Standard Rules, Statements on Appraisal Standards, Advisory Opinions, and indices is incorporated by reference.

Section 2316.4 states that all appraisers must comply with the Competency Rule of USPAP. The Competency Rule requires that an appraiser have the knowledge and experience to complete an assignment competently. Alternatively, the appraiser must take the following steps: (1) disclose the lack of knowledge and/or experience to the client before accepting the assignment; (2) take all steps necessary or appropriate to complete the assignment competently (*e.g.*, additional training and/or association with others competent to perform such assignments);

and (3) describe the lack of knowledge and/or experience and the steps taken to complete the assignment competently in the report. USPAP, Lines 364-368.

Mr. Kielsgard testified that Ms. Haley violated the following USPAP standards:

(i) USPAP Standard 1-5, lines 703 and 704, provides, “The appraiser should analyze any current Agreement of Sale, option or listing of the subject property, if such information is available to the appraiser in the normal course of business.” Ms. Haley’s appraisal indicated “N/A” in the Appraisal at the section requesting current listings, agreements of sale, or contracts, even though she had received and reviewed the purchase contract between Mr. Ojo and Ms. Hyatt before she prepared the Appraisal;

(ii) Omitting the analysis of the purchase contract also violated USPAP Standard 2-1(a), line 724, which states, “Clearly and accurately state the appraisal in a manner that will not be misleading.” The Appraisal was also misleading in listing the contract purchaser as the current owner and ignoring home sales that provided more representative comparables for the Property;

(iii) Ms. Haley also violated USPAP Standard 2-2, lines 736–738, which states, “Each written real property appraisal report must be prepared under one of the following three options and prominently state which option is used: Self-Contained Appraisal Report, Summary Appraisal Report, or the Restricted Use Appraisal Report.” The Appraisal did not state which type of report Ms. Haley prepared and thus did not enable the reader to understand the level of detail contained in the report; and

(iv) Ms. Haley violated USPAP Standard 2-2(b), subsection 2, line 873, which states that the summary report will “state the intended use of the appraisal.” The appraisal did not contain an intended use statement.

Other than offering a rationale for the comparable sales used in her valuation, Ms. Haley did not contest Mr. Kielsgard’s opinion that the Appraisal violated USPAP standards. I therefore conclude that the above violations also constitute violations of 17 DCMR 2316.1 and 2316.4, which require conformance with these standards and the knowledge and experience to complete an assignment competently. Accordingly D.C. Official Code § 47-2853.17(a)(9) authorizes disciplinary action against Ms. Haley for violating these District Regulations.

**C. Was Respondent Disciplined By A Disciplinary Authority In Another Jurisdiction?**

The Government contends that the Commonwealth of Virginia and the State of Maryland disciplined Ms. Haley’s for conduct that would be grounds for disciplinary action in the District of Columbia and that she is therefore also subject to reciprocal discipline in the District pursuant to D.C. Official Code § 47-2853.17(c)(4). [GPF p. 24]. Ms. Haley admitted that the Maryland Commission and Virginia Board took disciplinary action against her, but asserted that these actions were not justified.

With respect to the reciprocal discipline charges set forth in the Notice of Intent, the Government must satisfy two requirements. The first is that another authority took disciplinary action against Respondent, after a proceeding in which the Respondent had sufficient notice and an opportunity to be heard. *See In re Bridges*, 805 A.2d 233 (D.C. 2002) (recognizing procedural due process exception to imposition of reciprocal discipline for attorneys in the

District). The second is that the grounds for that disciplinary action would also be grounds for disciplinary action in the District. D. C. Official Code § 47-2853.17(c)(4).

Here, Ms. Haley's testimony and the decisions in Maryland and Virginia reveal that Ms. Haley had a full and fair opportunity to litigate the issues raised in those proceedings. The Maryland Final Decision states that Ms. Haley and her counsel appeared at a hearing before the Maryland Commission prior to the issuance of its order. Similarly, Ms. Haley and her counsel attended the IFF Conference of the Virginia Board that issued the Summary Report. This Report was in turn adopted as the Board's Final Decision at a Board meeting. The Final Decision itself indicates that Ms. Haley did not attend this meeting after the Board denied her request for a continuance. Although Ms. Haley disagreed with the decisions reached by the Virginia Board and the Maryland Commission, she had a full opportunity to be heard on the charges considered by these bodies.<sup>6</sup> Since Ms. Haley had the opportunity to litigate the issues in the Maryland and Virginia proceedings, both decisions are binding and may not be collaterally attacked in this proceeding. *Oltman v. Maryland State Board of Physicians*, 875 A.2d 200 (Md. App. 2005) (final judgments in state and federal courts justified the revocation of licensee's certificate by the Board of Physicians).

Having found that Ms. Haley received due process, the only remaining issue is whether the grounds for the disciplinary actions in Maryland and Virginia would also be grounds for disciplinary action in the District. Both jurisdictions imposed sanctions based upon Ms. Haley's violation of state regulations. As indicated in Section III(B) *supra*, such conduct is not only

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<sup>6</sup> Ms. Haley also testified that she appealed both decisions but was unsuccessful on her appeals.



grounds for discipline in the District but is the basis for Count II in the Government's Amended Notice. *See* D.C. Official Code § 47-2853.17(a)(9) (authorizes disciplinary action for violation of a District regulation). I therefore conclude that Ms. Haley is also subject to discipline pursuant to D. C. Official Code § 47-2853.17(c)(4).

#### **D. Sanctions**

The Government proposes that Ms. Haley's appraisal license be suspended for 3 years and that she be fined \$1,000. [GPF p.24]. The Government does not cite statutory authority, case precedent, or offer any argument to support its view that these sanctions are appropriate in this case.

Section 47-2853.17(c) provides a wide range of sanctions that the Board may impose if a person is found to have committed any of the acts described in subsection (a) of this provision. These include revocation, suspension or denial of a license or privilege, reprimand, and imposition of a civil fine, not to exceed \$5,000 for each violation. The statute, however, provides no guidance in determining when and under what circumstances each sanction may be appropriate. Reliance on case precedent is therefore critical.

##### **1. Considerations In Determining Appropriate Sanctions**

There are few reported cases concerning sanctions imposed upon occupational licensees; however, the Court of Appeals, charged with reviewing recommended attorney sanctions,

frequently issues disciplinary decisions involving the legal profession.<sup>7</sup> Recently, the Court reviewed several factors applied in attorney discipline cases to evaluate recommended sanctions.

*In re Elgin*, 918 A.2d 362 (D.C. 2007). These include, but are not limited to:

(1) the seriousness of the conduct at issue; (2) the prejudice, if any, to the client which resulted from the conduct; (3) whether the conduct involved dishonesty and/or misrepresentation; (4) the presence or absence of violations of other provisions of the disciplinary rules[;] (5) whether the attorney had a previous disciplinary history; (6) whether or not the attorney acknowledged his or her wrongful conduct; and (7) circumstances in mitigation of the misconduct. *Id* at 376.

In cases involving attorneys and other professions, courts have also considered whether the alleged conduct was intentional, reckless, or negligent. The suspension or revocation of a license has been deemed appropriate when the act is intentional, fraudulent, willful or dangerous to public health and safety. *Williamson v. D.C. Bd. of Dentistry*, 647 A.2d 389, 395 (D.C. 1994) (affirming revocation of a dentist's license since substantial evidence established that he had engaged in "fraudulent or deceptive use of his license"); *In re Bland*, 911 A.2d 1228, 1229 (D.C. 2006) (finding "disbarment is an appropriate sanction for conduct evidencing a pattern of neglect and willful disregard for ethical and legal duties . . . ." (quoting *In re Haupt*, 444 A.2d 317, 318 (D.C. 1982))); *see also In re Hagos*, 616 A.2d 343, 346 (D.C. 1992) ("[N]o doubt that disbarment is the appropriate sanction[;] . . . [r]espondent's misappropriation was both intentional and deliberate . . . ."); *Cardoza v. Real Estate Comm'n of D.C.*, 248 A.2d 815, 817 (D.C. 1969)

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<sup>7</sup> D.C. Bar R. XI § 9(g)(1) (if the Board on Professional Responsibility recommends sanctions against an attorney, the attorney or Bar Counsel may file exceptions with the Court of Appeals. The Court "shall adopt the recommended disposition of the Board unless to do so would foster a tendency toward inconsistent dispositions for comparable conduct or would otherwise be unwarranted."

(affirming revocation of a license when a real-estate broker knowingly permitted her license to be used by two unlicensed real estate salesman); *see also Greene v. Real Estate Comm'n of D.C.*, 218 A.2d 508, 511-12 (Oct. 1966) (affirming the 90-day suspension of a license when a broker knowingly hired an unlicensed salesman thereby endangering the public); *DCRA v. Flood of D.C, Inc.*, OAH No. CR-B-06-800040 at 15, LEXIS at \*33 (October 20, 2006) (finding that plumber's willful actions authorized suspension yet imposing only a monetary sanction because suspending the license would adversely impact 150 innocent employees). Suspensions have also been deemed appropriate when a licensed professional is found to act recklessly with conscious disregard of a known risk. *In re Cleaver-Bascombe*, 892 A.2d 396, 404 (D.C. 2006) (a two year suspension deemed appropriate when an attorney "recklessly" maintained inadequate time records, and "consciously" disregarded the risk that she may overcharge a client); *In re Jones-Terrell*, 712 A.2d 496, 499-500 (D.C. 1998) (60-day suspension ordered despite "lack of evil or corrupt intent"). When conduct is unintentional something less than a suspension or revocation is normally appropriate. *In re Loyd*, 855 A.2d 280, 281 (D.C. 2004) (holding that a public censure was an appropriate sanction rather than a suspension of license because an attorney's "misconduct was neglectful rather than intentional" and "did not involve dishonesty".)

A court should also consider any mitigating factors including "the absence of prior discipline, admission of wrongdoing, [and] cooperation with [the Board]...and restitution . . . ." *In Re Addams*, 579 A.2d 190, 192 n.4 (D.C. 1990); *In Re Reback*, 513 A.2d 226, 233 (D.C. 1979) (attorneys' one-year suspension reduced to six months because respondents admitted their wrongdoing and were contrite.) Ultimately, a court must balance the licensee's conduct along with any mitigating factors against, "broader considerations relevant to the determination of appropriate discipline such as 'the nature of the particular violation, the need to protect the

public, ... and the . . . profession.”” *Addams*, 579 A.2d at 192 (quoting *In re Smith* 403 A.2d 296, 303 (D.C. 1979); *See also Joseph v. District of Columbia Board of Medicine*, 587 A.2d 1085, 1088 (D.C. 1991) (protection of the public is the paramount concern). Contrary to the meaning that the terms “sanction” and “discipline” might imply, the purpose of sanctions in these discipline cases is not to punish but rather to protect the public “by assuring the continued or restored fitness” of the respondent to practice his or her profession. *Elgin*, 918 A.2d at 376.

## **2. Considerations Applied In This Case**

In applying these considerations to Ms. Haley’s conduct, it is significant that she did not act intentionally or recklessly.<sup>8</sup> Nevertheless, her mistakes were serious. The Appraisal that triggered the Board’s action was replete with error. These included failures to comply with basic USPAP provisions and reflected, at a minimum, a casual indifference to professional standards. Moreover, Ms. Haley committed other egregious mistakes that contributed to the Appraisal’s inflated valuation of the Property. These included: (i) a picture in the Appraisal depicted the wrong property; (ii) the address of the Property reflected an incorrect location in the Northeast rather than the Southeast quadrant of the District; (iii) the Appraisal inaccurately depicted the flood map designation for the Property; (iv) the condition of the Property should have been stated as fair rather than average; and (v) the heat source for the Property was described incorrectly. Additionally, Ms. Haley’s previous disciplinary history in Virginia and Maryland, for violations similar to those committed in this case, suggests a consistent pattern of

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<sup>8</sup> The Appraisal predated the Virginia and Maryland disciplinary actions. Had the opposite been true, these decisions would have served as notice to Ms. Haley that her work was deficient. Her continued appraisal practice, without first securing additional training and/or assistance from a qualified appraiser, might then have been deemed a recklessness disregard of a known risk.

carelessness in her work.

The Government did not present evidence to establish what prejudice, if any, the Property purchaser or her lender may have suffered as a result of the Appraisal. At a minimum, it may be inferred that Ms. Hyatt paid an inflated price for the Property and that her lender's mortgage balance far exceeded the value of its security. This harm to the purchaser and lender, coupled with Ms. Haley's negligence, demonstrates that her continued practice as an appraiser, without further education and training, poses a threat to the public and may serve to undermine the reputation of appraisers generally.

I have considered the mitigating fact that Ms. Haley acknowledged or did not contest many of the Government's allegations and have also found significant the lack of any evidence to establish that Ms. Haley acted either intentionally or dishonestly. I therefore conclude that the Government's recommended three-year suspension is not warranted. Yet, in order to assure that Ms. Haley is restored to fitness to practice her profession and to protect the public, a six-month suspension pending Ms. Haley's completion of additional training is appropriate. Moreover, upon her reinstatement, Ms. Haley shall be required to complete a two-year probationary period in accordance with the terms of this Order.

I will also impose a \$1,000 fine as recommended by the Government. Ms. Haley shall only be entitled to reinstatement upon payment of the fine and completion of the additional training as provided in this Order.

#### IV. ORDER

Based upon the foregoing findings of fact and conclusions of law, it is, this \_\_\_\_ day of \_\_\_\_\_, 2008:

**ORDERED**, that, in accordance with D.C. Official Code § 47-2853.17(c)(4), Mary Haley be formally **REPRIMANDED** for her failure to comply with USPAP in violation of 17 DCMR 2316.1 and 2316.4 and for her conduct giving rise to the issuance of the February 22, 2005, Final Opinion and Order of the Virginia Board, and the June 14, 2005, Final Decision and Order of the Maryland Commission; and it is further

**ORDERED**, that, in accordance with D.C. Official Code § 47-2853.17(c)(2), the license of Mary Haley to practice as a real estate appraiser in the District of Columbia, shall be, and hereby is, **SUSPENDED** for a period of six months commencing 10 days after the date of this Order; and it is further

**ORDERED**, that, in accordance with D.C. Official Code § 47-2853.17(c)(6), **in addition** to the continuing education requirements provided in 17 DCMR 2310, Ms. Haley shall complete 18 class hours of coursework on the provisions of the USPAP taught by instructors certified by the Appraiser Qualifications Board. The coursework shall require a passing score on a written examination for successful completion and Ms. Haley shall submit documentation proving successful completion of same to the Board; and it is further,

**ORDERED**, that Ms. Haley's appraisal license shall **REMAIN SUSPENDED** until such time as the Board receives proof that she has successfully completed the 18 hour USPAP education required hereunder; and it is further,

**ORDERED**, that, in accordance with D.C. Official Code § 47-2853.17(c)(5), Respondent shall pay a **ONE THOUSAND DOLLARS (\$1,000)** fine for violating 17 DCMR §§ 2316.1 and 2316.4 and the USPAP. This fine shall be paid in accordance with the attached instructions within 20 calendar days of the mailing date of this Order; and it is further

**ORDERED**, that failure to comply with the attached payment instructions and to remit a payment within the time specified may result in the imposition of additional sanctions, including the continued suspension of Respondent's license pursuant to D.C. Official Code, § 47-2853.17(b); and it is further

**ORDERED**, that, in accordance with D.C. Official Code § 47-2853.17(c)(7), upon the reinstatement of her license, Respondent shall be placed on **PROBATION** for a period of two years. As a condition of this probation, Respondent shall be required to attend no fewer than 10 class hours per year of continuing education, taught by instructors certified by the Appraiser Qualifications Board, **in addition** to the requirements contained in 17 DCMR 2310, with documentation thereof submitted to the Board by December 31<sup>st</sup> of each year in accordance with the requirements of 17 DCMR 2311. Failure to abide by the terms of this probation may result in summary suspension of Respondent's license; and it is further

**ORDERED**, that the appeal rights of any parties aggrieved by this Order are set forth below.

February 11, 2008

/s/  
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Louis J. Burnett  
Administrative Law Judge